

LYNCH ICHIDA THOMPSON KIM & HIROTA

TIMOTHY J. HOGAN 5312-0
1132 Bishop Street, Suite 1405
Honolulu, Hawaii 96813
Tel. No. (808) 528-0100
Fax No. (808) 528-4997
E-mail: tjh@loio.com

Attorney for Plaintiff
WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;)	Civ. No. CV03 00385 SOM-LEK
)	(Copyright)
Plaintiff,)	
vs.)	PLAINTIFF WAYNE BERRY'S
HAWAIIAN EXPRESS SERVICE,)	CONCISE STATEMENT OF THE
INC., a California corporation; et al.)	CASE; SUGGESTED TOPICS FOR
)	VOIR DIRE; CERTIFICATE OF
)	SERVICE
Defendants.)	TRIAL DATE: January 24, 2006
)	JUDGE: Honorable Susan Mollway
)	

PLAINTIFF WAYNE BERRY'S CONCISE
STATEMENT OF THE CASE

Plaintiff Wayne Berry is the owner of the copyright to certain computer software. The Court has already determined that defendant Fleming Companies, Inc. and seven of its employees infringed Mr. Berry's copyright. In addition to

determining how much if any damages Fleming and the employees must pay Mr. Berry for the illegal use of his software, you will also determine issues related to whether Fleming is liable for the illegal use of the Berry software by the seven employee defendants and others who are no longer defendants. Fleming denies that it has to pay for its employees' or the other users' infringement. Fleming and the Fleming employees deny that they have to pay Mr. Berry anything for their infringing use of Mr. Berry's software.

**PLAINTIFF WAYNE BERRY'S
SUGGESTED TOPICS FOR VOIR DIRE**

Plaintiff Wayne Berry respectfully submits his suggested topics for voir dire.

1. The Plaintiff is named Wayne Berry. He is an independent software developer. Has anyone heard of Wayne Berry? Does anyone, including their family and friends to the best of their knowledge, have or have had any affiliation with Wayne Berry?

2. This case involves a company named Fleming Companies, Inc. You will hear this company referred to as Fleming. Has anyone heard of Fleming? Does anyone, including their family and friends to the best of their knowledge, have or have had, any affiliation with Fleming or any of its employees?

3. This case involves a company named C&S Wholesale Grocers, Inc. that you will hear referred to as "C&S." Has anyone heard of C&S? Does anyone, including their family and friends to the best of their knowledge, have or have had, any affiliation with C&S or any of its employees?

4. Other Defendants are former Fleming employees some of whom still work for C&S. They are Mark Dillon, Teresa Noa, Justin Fukumoto, Sonia Purdy, Jacqueline Rio, Melvin Ponce and Alfreda Waiolama? Has anyone heard of Mark Dillon, Teresa Noa, Justin Fukumoto, Sonia Purdy, Jacqueline Rio, Melvin Ponce

and Alfreda Waiolama? Does anyone, including their family and friends to the best of their knowledge, have or have had, any affiliation with Mark Dillon, Teresa Noa, Justin Fukumoto, Sonia Purdy, Jacqueline Rio, Melvin Ponce and Alfreda Waiolama?

5. The attorneys in this case are seated in front of you. The attorneys seated closest to you are the Plaintiff's attorneys. Timothy Hogan and Wesley Ichida are with the firm of Lynch Ichida Thompson Kim& Hirota and they represent the Plaintiff Wayne Berry. Seated across from Mr. Berry's attorneys are attorneys for the Defendants.

6. Fleming is being represented by something called the Post Confirmation Trust or the "PCT." The PCT is represented by Kirkland & Ellis. The Kirkland & Ellis attorneys representing the PCT are Eric Liebeler and Damian Capozzola? Does anyone, including their family and friends to the best of their knowledge, have or have had any affiliation with Kirkland & Ellis? Does anyone, including their family and friends to the best of their knowledge, have or have had any affiliation with Eric Liebeler? Does anyone, including their family and friends to the best of their knowledge, have or have had any affiliation with Damian Capozzola?

7. The law firm of Kobayashi Sugita & Goda is local counsel for

Fleming's PCT and C&S. Lex Smith is the attorney acting as local counsel for Fleming. Does anyone, including their family and friends to the best of their knowledge, have or have had any affiliation with Kobayashi Sugita & Goda? Does anyone, including their family and friends to the best of their knowledge, have or have had any affiliation with Lex Smith?

8. Mark Dillon, Teresa Noa, Justin Fukumoto, Sonia Purdy, Jacqueline Rio, Melvin Ponce and Alfreda Waiolama are represented by the law firm of Lyle Hosoda & Associates? Lyle Hosoda and Raina Mead represent these defendants. Does anyone, including their family and friends to the best of their knowledge, have or have had any affiliation with Lyle Hosoda & Associates? Does anyone, including their family and friends to the best of their knowledge, have or have had any affiliation with Lyle Hosoda? Does anyone, including their family and friends to the best of their knowledge, have or have had any affiliation with Raina Mead?

9. Does anyone, including their family and friends to the best of their knowledge, have or have had any affiliation with the City and County of Honolulu government?

10. Does anyone, including their family and friends to the best of their knowledge, have or have had any affiliation with or connection to the food wholesale or retail industries?

11. Does anyone, including their family and friends to the best of their knowledge, have or have had any affiliation with or connection to the shipping industry including trucking and/or ocean freight?

12. Does any believe that it is permissible to use copyrighted materials without permission for financial gain?

DATED: Honolulu, Hawai'i, January 10, 2006.

/s/ Timothy J. Hogan
TIMOTHY J. HOGAN
Attorney for Plaintiff WAYNE BERRY

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Plaintiff,)
) **CERTIFICATE OF SERVICE**
vs.)
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HAWAIIAN EXPRESS SERVICE,)
INC., a California corporation; et al.)
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Defendants.)
)
)
_____)

CERTIFICATE OF SERVICE

I hereby certify that on the dates and by the methods of service noted below, a true and correct copy of Plaintiff Wayne Berry's Concise Statement of the Case and Suggested Topics For Voir Dire was served on the following at their last known addresses:

Served Electronically through CM/ECF on January 10, 2006:

Rex Y. Fujichaku rfujichaku@bchlaw.net, jennifer@bchlaw.net

Lyle S. Hosoda lsh@hosodalaw.com

Raina P. Mead rpmb@hosodalaw.com

Ann C. Teranishi act@ksglaw.com

Thomas H.Y.P. Yee thy@ksglaw.com

DATED: Honolulu, Hawai'i, January 10, 2006.

/s/ Timothy J. Hogan
TIMOTHY J. HOGAN
Attorney for Plaintiff WAYNE BERRY